

DRAFT MINUTES
WATER POLICY TECHNICAL ADVISORY COMMITTEE MEETING
JULY 23, 2004

Attendance:

Water Policy Technical Advisory Committee Members:

Bob Burnley, DEQ	Jesse Richardson, VAPA
Jerry Peaks, VDH	Jerry Higgins, Blacksburg, Christiansburg, VPI
Tom Botkins, VMA	Water Authority
Mike Thacker, AEP	Josh Rubinstein, VA. Rural Water Association
Frank Sanders, City of Winchester	Ed Imhoff
Judy K. Dunscomb, The Nature Conservancy	Traci Goldberg, for Charlie Crowder, Fairfax
Terry Reid, VAWWA	County Water Authority
Bob Williams for Cathy Taylor, Dominion	Wilmer Stoneman, VA. Farm Bureau
Mike West, HBAV	William E. Cox, Virginia Tech
Kristen Lentz, City of Norfolk	Ward Staubitz, USGS
Eldon James, RRBC	David Paylor, Deputy SNR
Patti Jackson, James River Association	Dan Kavanaugh, VAPDC
Donna Pugh Johnson, VA. Agribusiness Council	Robert Royall, VA. Water Well Association
David Kovacs, VCN	

Members Absent:

Christopher Miller, Piedmont Environmental	Jeffery Irving, U.S. Army Corps of Engineers
Council	Guy Aydlett, VAMWA
Robert Conner, Brunswick County	Art Petrini, Henrico County

DEQ and Facilitation staff:

Scott Kudlas	Barbara Hulburt
Joe Hassell	Mark Rubin
Kathy Frahm	

Interest Group Members:

John Kauffman, DGIF
Robert Grabb, VMRC
Chris Adkins, VDH
Tom Gray, VDH
John Carlock, Hampton Roads PDC
Kay Slaughter

Denise Thompson, VML
Brent Waters, Golder Associates
Ray Jackson, WWAC
Becky Mitchell, City of Virginia Beach
Greg Prelewicz, FCWA
Marty Farber, DLS
Speaker Pollard
John Lain
Katie Kyger, VA Agribusiness Council

Observers:

Larry Land, VACO

Summary of the Meeting:

The meeting began with introductions of WP-TAC members and observers present. Bob Burnley announced that WP-TAC member Shelton Miles has been appointed to the State Water Control Board and would no longer be serving on the WP-TAC.

Barbara Hulburt outlined what has taken place since the last full TAC meeting in November 2003. While a good deal of work was done by the full TAC in identifying issues, it was decided that, given the October 2004 deadline the state is facing, it would be helpful to have a slightly different process for this phase of the TAC's work. With that in mind, interest groups have been established and a Steering Committee created. The Steering Committee is a commonly-used technique to work on narrowing issues for a large group like the WP-TAC. The Steering Committee is not a decision-making body, rather a group refining ideas and making recommendations to the full TAC. The full TAC will continue to be the forum where decisions will be made.

Robert Royall expressed his concern that groundwater interests were not represented on the Steering Committee. He requested that he be appointed to the Steering Committee. Barbara explained that this decision would be made by the facilitators and DEQ, but that it was her recommendation that changes to the Steering Committee not be made at this point. She encouraged Robert to attend the meetings of the Steering Committee, speak from the Open Chair if he has concerns, and work more closely with his Business/Commercial Interest Group representatives to assure that his issues are discussed in the Steering Committee. She also commented that Terry Wagner of DEQ has consistently raised groundwater issues and that they have been discussed by the Steering Committee. Robert stated that he wanted the minutes to reflect his request.

Barbara then discussed Phase I and Phase II plans in the context of the State Plan. She explained that the State Plan will be made up of Phase I pieces that will ultimately create the context within which planning is being done. Phase II provides additional depth and dimension to the State Plan. A comment was made that all of the Phase I pieces may not fit properly, but that is how conflicts are identified. Phase II would then provide the opportunity to attempt to resolve some of those conflicts.

The next agenda item began with an overview of the Phase I flowchart. The presentation emphasized the process proposed and relationship to requirements of the draft regulations. The presentation also reflected the preliminary discussions of the Steering Committee.

The following comments were made regarding the flowchart and the identified regulatory citations:

Box 1: While the Steering Committee recommended that local government(s) be the responsible party for submitting plans, concern remained about the role of water purveyors in the process.

- Some members felt that waterworks and localities might not cooperate and localities might veto water authorities' preferred option. Others said that view was overstated and that generally localities will perform their duty. A member pointed out that localities appoint the water authority boards. Another member took the position that local officials, being elected officials, are the best ones to decide how these plans are developed.
- It was confirmed that towns could file their own plan.

- A member pointed out that there are a lot of large private water suppliers/users who don't know how local responsibility for the plans is going to work.
- The following was suggested with respect to the language in the margin of Box 1:
 - Change term "draft" to "initiate" or some other similar term.
 - Add 780-60.B.
- Box 2: A concern was expressed that timely and thorough agency comments need to be ensured. What can be done to foster agency participation? Is a code change needed? Are the regulation and the proposed use of a TEC sufficient? There were two suggestions to foster agency participation:
 - clarify the draft regulation,
 - review code to see changes needed, and if so amend code.
- VDH said they intend to participate.
- Expectation of state staff is that Phase I is mostly descriptive and not likely to generate a lot of controversy.
- In Box 2: Change term "comment" to provide "information".

Box 3: Several members suggested that it would be beneficial to have state input before public notice. It may be useful to add a staff review element prior to the local public hearing.

- Additional clarity is need regarding who receives the notice of a local public hearing and whether it extends outside the locality. A suggestion was made that the locality could notify DEQ of their intent to adopt and DEQ could then post notice on their web-site.
- Make the notice in Phase I the same as in Phase II for consistency.
- Another member suggested that more specificity in notice requirements be added. Specifically, it should indicate that "written comments" will be accepted, as well as the necessity for a public hearing, and that written comments would be given equal weight.

Box 5:

- Change the term "nature" to "merits"
- The use of the term "public meeting" rather than "public hearing" caused some concern. The issue is whether the APA grants appeal rights to public meetings. It was agreed that this would be looked into to ensure that people are not inadvertently cut out of the process.
- Create greater consistency between 780-160.B and 780-170.B.
- Suggestion to go back and create a new box addressing hearing and written comment issues (see comments regarding this issue in Box 3, above).
- DEQ wants to pattern process after present practice where routine applications are delegated to Executive Director for approval and controversial plans receive SWCB approval.
- Another member expressed concern that any of these actions be delegated by the SWCB to the Executive Director. Based on past experience, he was concerned about a staff person deciding matters of local policy. He suggested that the weight of the SWCB decision would be greater.
- Another question raised was whether the sequence shown on the flow chart is accurate, or whether the comments associated with Box 5 should come before the locality adopts its plan (Box 4).

Box 6:

- Change the term "nature" to "merits"
- The terms "consistency" and "compliance" are both used, recommend using one term throughout.
- Add a new 160.G to the draft regulation stating information will be included in the State Plan.

Box 7:

- Clarification is needed to avoid the implication that the information gathered is not the exclusive source of information for the State Plan.

For consistency, the same agencies should be mentioned in all approval sections.

An amendment process should be added to the flowchart.

After completing review of the flow chart, the TAC moved on to a discussion of the draft regulation. The draft regulation before the group included changes recommended by the Steering Committee.

The following information was collected on the flip chart as comments and suggestions were made. To the extent that decisions or agreements were made, they are noted here. Otherwise, the notes that follow are simply suggestions or proposals that were put forward:

Section 10:

- A member expressed concern about localities being the responsible party for development of the plans.
- There was concern about the proposed "C" and "D." Is this language needed? If language is added to address some members' concerns about how the draft regulation will impact rights and existing permits, careful consideration should be given to its context. While there was agreement in the TAC with the notion that the regulations do not affect current legal rights, there was concern about the language itself. It was agreed that some additional language should be developed and would be reviewed to ensure that all concerns are addressed.
- A member proposed alternative language to address the preservation of groundwater rights.

Section 20: no comments

Section 30:

- Suggestion was made to use the exact language from the Code.

Section 40:

- A request was made to withhold comments on a number of definitions due to technical discussions that need to be held, particularly between DEQ and VDH. The general suggestion was that when these discussions take place, that the TAC encourages the use of one definition.
- One member suggested making negatives into positives. For example, instead of saying minimum flow, say the maximum amount available during a drought.
- Another suggested making the definition of safe yield the minimum standard, something a locality can go beyond if they choose to have a more reliable system.
- There was a suggestion to add towns and authorities to those who can do regional plans.
- There was concern expressed regarding the definition of "unaccounted for losses".

Section 50:

- There was a suggestion to evaluate the language so that it is clear that regional plans are encouraged.

Section 60.A:

- There is a typo in 60.A, line 45 "Phases" should be changed to "Phase".
- A suggestion was made reference public hearing requirements of 15.2-1420 et. seq.
- A concern was raised whether Phase II should be required.

- Previous comments from the flowchart discussion regarding written comment and the importance of obtaining state comments prior to local adoption were reiterated.

Section 60.B:

- It was suggested that some issues regarding the potential for deletion of Section 140 B could be addressed here.
- 60.B.1-3, one member indicated it would be a burden to have localities submit this information because the state already has all of it.
- 60.B.5, it was pointed out that this should now include a reference to 120 *and* 130.
- 60.B.6, a reference is needed for this element since it was divided from B.7.
- 60.B.7, is a concern because the reference to section 140 needs to address reducing demand.
- 60.B.8, a concern was expressed regarding the implication that localities have to develop maps. The concern is this will be a burden on small localities/towns.

Several TAC members were concerned that too much was being made of the perceived burden. It was argued that you can't make a State Plan with massive information gaps--it would be unworkable. One suggestion was that maybe in an extreme case the State could write the local plan. There was objection to this idea, as well, since it was stated that the locality was the one with the vested interest in the plan and, therefore, the one with the right to determine what should go in it.

Section 60.D

- 60.D.2, a comment was made that this section needed clarification using the phrase "no greater than X population".
- Suggestion made to use "the most recent census" instead of "2000 census".

Section 60.E:

- This section needs to be clarified that periodic update every 10 years is required, not just one update after the first 10 years.
- Should exemptions be provided?
- Are there other changes that could occur which would be appropriate to require an amendment to the plan? One option could be to reference any change consistent with 60.B.1-11?

Section 70

- 70.A.3, this should be more explicitly stated like "...that has been reported to DEQ".
- 70.A.5, perhaps refer to the AWWA M50 manual instead of the current language. Also use the term "identify" instead of "Establish" in describing demand methodologies.

The TAC was requested to provide written comments back to DEQ by COB August 2nd on pages 7-13 of the draft regulation and Section 160. All comments received will be distributed to the full TAC.

The meeting moved on to a discussion of the State Plan. A staff presentation was made highlighting the three recommended volumes. Volume 1 would focus on background information, policy, and general discussions on different elements of water resource planning. These discussions of water resource planning are expected to include references and examples of successful techniques that can be used. Volume 2 was presented as an annual report of "current" issues, status of program efforts (including local plans and status of obtaining new data), and any plans for action to obtain any unmet needs for the program's technical assistance or evaluative role(s). The point was made that no decision has been made on what information is included in Volume 2 and who decides. Volume 3 was presented as a combination of state information and information derived from local plans in the form of river basin summaries. The hope is that most of this plan can be web-based.

The bulk of the TAC discussion centered on river basin organization vs. political/regional organization of local plans. To the extent that it could be done, the seemed to be a preference for basin organization. It was recognized,

however, that this might unduly complicate the situation for localities and that, at least initially, the burden of organizing the material might well be better met by the state.

The meeting concluded by encouraging TAC members to spend some time in their interest groups discussing whatever they might need to discuss.